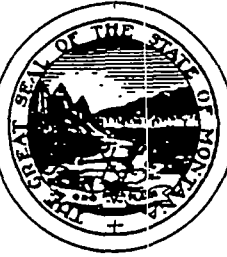


DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

1068822 - R8 SDMS



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Solid and Hazardous Waste Program
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MEMORANDUM

TO: Jim Madden, Attorney
Superfund

FROM: Bill Potts, Environmental Specialist
Hazardous Waste program

DATE: September 30, 1992

SUBJECT: ASARCO East Helena Process Pond Sediments

OCT 02 1992

The following is an evaluation of the ASARCO's proposed disposition of process pond sediments at East Helena, as it would pertain to RCRA regulations. Much of what follows is based on certain presumptions with respect to this waste. Those presumptions are: (1) the ASARCO operation is a primary lead smelter; (2) the process water pond receives waste water from a variety of sources in the plant, including various smelting processes and (3) at least a portion of the sediments in the process water pond exhibit characteristics of hazardous waste specifically for TC arsenic (D004), cadmium (D006), and lead (D008). Further, no toxic organic constituents listed in Appendix VIII, Part 261 are present in the sediments. Because EPA has the lead on this proposed project we have cited applicable regulations from 40 CFR.

As you are aware, EPA's original listing of surface impoundment solids contained in and dredged from surface impoundment at primary lead smelter facilities has been remanded by the courts. However, EPA has determined that if such wastes exhibit a characteristic of a hazardous waste then that substance would still be regulated.

With respect to your question of which of the three proposed analytical methods would be appropriate in determining the status of this waste, ASARCO in determining the presence of metals would be required to utilize the prescribed TCLP analytical test method.

As we understand it ASARCO is proposing to consider the pond sediments to be a sludge exhibiting a characteristic of hazardous waste which is intended to be reclaimed. Under this scenario that material would be considered to be excluded from hazardous waste regulation, see 261.2(C)(3). However, it is important to determine

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the definition of sludge to ascertain the applicability of this exclusion. We would refer you to 260.10 which defines sludge as any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial waste water treatment plant, water supply treatment plant or air pollution control facility. For the purposes of ASARCO's proposal we would also refer you to 260.10 which defines a waste water treatment unit among other things as meeting the definition of tank or tank system which is also defined in 260.10. From our review of the ASARCO proposal and its application to the above mentioned recycling regulations it would not appear that the proposed exclusion would apply.

We also would like to refer you to Subpart H of Part 266 which pertains to hazardous waste being burned in boilers and in industrial furnaces. 266.100(c) specifically places owners and operators of smelting, melting and refining furnaces in a category of being conditionally exempt from regulation under Subpart H; however, such owners and operators are not exempt from 266.101 and 266.112.

266.101 pertains to the management of hazardous waste prior to burning for generators of hazardous waste that is burned in a boiler or industrial furnace. Such parties are subject to generator requirements found in Part 262. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to Part 263. In addition, owners and operators that store hazardous waste that is burned in a boiler or industrial furnace are subject to applicable provisions of Subparts A through L of Part 264 and Subparts A through L of Part 265.

Based upon the ASARCO proposal it appears that the applicable storage requirements would be found in Subpart L, Part 265, WASTE PILES. Subpart L provides specific requirements pertaining to protection from wind, waste analysis, containment, special requirements for ignitable reactive and incompatible waste and certain requirements for closure and post-closure care. In addition Subpart L stipulates that a waste pile must meet design and operating requirements found in 264.251. 264.251 specifies that a waste pile must have an adequate liner, requirements for liner strength and thickness, liner foundation requirements, leachate collection and removal system and certain design and operating requirements.

266.112 pertains to the regulation of residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace. It may be worthwhile advising ASARCO that such residues are not excluded from the definition of a hazardous waste unless the owner or operator meets certain requirements. At this point, I do not know if its worthwhile to elaborate on the potential applicability of this regulation, but you may wish to raise the issue.